IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

&
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 3969 of 2005

Between:

M/s. Sri Kesava Slab Co. Belamcherla Kurnool Rep by its Proprietor, K. Adi Seshappa Naidu, S/o. K. Subbaiah, aged 45 years, R/o.D.No. 4/200 Near Gayatri Estate, Belamcherla, Kurnool.

..... PETITIONER

AND

1 The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Nampally, Hyderabad.
2 Asst. Commissioner Tax Officer, Zaheerabad Medak District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction, more specifically in the nature of Writ of Mandamus or any other appropriate direction declaring the action of the Respondent No. 2 in collecting the amount of Rs. 9,600/- by receipt bearing No. 5846159, dated 29-1-2005, without passing any notice, order or issuing a proceedings as illegal void and ultra vires in the interest of justice and equity or to pass any other order or orders as deem fit and proper in the circumstances of the case

Counsel for the Petitioner:MS.NASEEB AFSHAN

Counsel for the Respondents No.: GP FOR COMMERCIAL TAX

The Court made the following :

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ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

Heard the learned Counsel for the petitioner as well as the learned Government Pleader. At their request, the writ petition itself is taken up for final disposal at the stage of admission.

Rule Nisi.

The petitioner in the instant writ petition invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of *Mandamus* declaring the action of the 2nd respondent in forcibly collecting the amount of Rs.9,600/- from the petitioner under receipt bearing No.5846159, dated 29.01.2005, without issuing any notice, order or issuing a proceeding, as illegal, arbitrary and void.

In the affidavit filed in support of the writ petition, it is stated that the petitioner sold rough stones to one
Sri Charbuja Stone Industries, Chittorgarh, Rajasthan for an amount of Rs.17,587/-. The purchaser obtained requisite waybills from the Commercial Tax Officer-III, Kurnool, apart from transit pass from the Department of Mines and Geology, which is valid up to 31.03.2005. The said goods were loaded into the lorry, which was stopped at Zaheerabad by the
2nd respondent. The 2nd respondent collected a sum of Rs.9,600/- through receipt bearing No.5846159, dated 29.01.2005, towards tax of Rs.1,600/- on the rough stones and penalty of Rs.8000/-.

The fact remains that there is no assessment order, as such, imposing any tax liable to be paid by the petitioner. This Court in ***Abmica Lamp House, Rajahmundry v. CTO(Int)-Enforcement, Hyderabad,*** issued certain directions

as to how the authorities are required to act in such a situation. The directions that were issued are in the following manner:

i. Under the provisions of the Act and the Rules, the Officers of the Vigilance/Intelligence Wing of the Department can exercise the powers that are conferred, such as inspection of the business premises, books of accounts, stock verification etc., apart from recording any statement from any of the responsible person of the business concern;

ii. Basing on such information, if any of the Officer of the said Vigilance or Intelligence Department is empowered to make assessments, such Officer can proceed to frame assessments basing on the material and such assessments could be completed only after complying the procedure provided under the provisions of the Act and the Rules, i.e, granting sufficient opportunity to adduce evidence by the dealer for the proposed assessment i.e., as to the quantities as well as valuation of the stocks etc; otherwise such material or information can be forwarded to the assessing authority having jurisdiction for taking appropriate action including the assessment, reassessment etc.

iii. There shall be at least a gap of one week between the date of an order of assessment, or demand notice, as the case may be, and an order compounding the offence, wherever the dealer comes forward with such an offer.

iv. The judgments in S.R. Traders and Bhavani Traders v. The ACCT & Ors., {(1993 17 APSTJ 125)}, KAKI BUTCHI Raju Son v. State of A.P. {(1994) 19 APSTJ 19)}; Badrinath Oil Company V. Assistant Commissioner, {(1995) 21 APSTJ 28}; Bharat Metals v. Special ACTO and another, 1998 (4) ALD 484 = {(1998) 27 APSTJ 72}; and Sri Lakshmi Venkata Raghava Traders V. CTO (Int. & Enforcement Wing)W.P.NO.10668/1993}, cannot be said to be the authorities for the proposition that the inspecting officials of the Commercial Tax Department are empowered to pass orders compounding the alleged offences on the same

day of inspection and to collect the amount specified in such orders, on the same day;

v. After completion of the assessment, it is open to the department to issue a demand notice along with the assessment order by providing time as contemplated under the provisions of the Act for collection of the tax.

vi. If any penalty proceedings are initiated by the competent authorities, even such proceedings are to be completed after giving notice and sufficient opportunity to the dealer, and thereafter the penalty order could be served along with a notice of demand, giving sufficient time for payment of the amount of penalty, if levied.

vii. If the penalty proposed is unrelated to the assessment of the tax liability, such penalty could be levied independent of the assessment proceedings, but if penalty is related to the assessable tax, such penalty proceedings could be initiated and completed only after completion of the assessment and not before.

viii. The petitioners shall be refunded the amounts collected from them, or be provided with an option to agree for adjustment of the same towards payment of the tax in future.

ix. If the inspecting authorities are of the opinion that the books of account are required to be seized, they can do so only in accordance with the procedure contemplated under the Act and the Rules and not otherwise. Similarly even with reference to the seizure of the goods, the same is to be done as per the procedure provided, and in such cases, the dealer can also avail the benefit of getting the release of the goods on furnishing security as provided under the provisions of the Act and the Rules.

x. The Commissioner of Commercial Taxes is further directed to issue necessary circular to comply the directions of this Court by all the concerned officers.

The action in the instant case of levying tax as well as penalty on the same day and forcibly collecting the same is contrary to the directions issued by the Full Bench of this Court in the Judgment referred to above.

In the circumstances, this writ petition is disposed of declaring the action of the respondents in collecting the amount of Rs.9,600/- as illegal and void. There shall be a direction, directing the respondents to adjust the amount of Rs.9,600/- (Rupees nine thousand and six hundred only) collected from the petitioner vide receipt No.5846159, dated 29.01.2005 towards tax, if any, payable by the petitioner.

This order of ours shall not preclude the respondents from putting the petitioner on proper notice and passing an assessment order, in accordance with law. It shall be perfectly open to the respondents to make an appropriate enquiry with due notice to the petitioner and pass an assessment order, which shall be communicated to the petitioner, in order to enable it, to avail the remedies that may be available to it in law.

Accordingly, the Writ Petition is disposed of without any order as to costs.

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B. SUDERSHAN REDDY, J

Date: 25-04-2005

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C.V. RAMULU, J

NN/PV

Copies to:

1 The Commissioner of Commercial Taxes, Government of Andhra Pradesh, Nampally, Hyderabad.
2 The Asst. Commissioner Tax Officer, Zaheerabad Medak District.

3. Two C.Cs to the G.P. for Commercial Tax, High Court of A.P., High Court Buildings, Hyderabad (O.U.T.)

4. Two C.D. copies.